

BOARD OF ENVIRONMENTAL REVIEW AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON PETITION FOR RULEMAKING

Agenda # III.D.

Agenda Item Summary: On September 14, 2005, the Montana Environmental Information Center; Montana Public Health Association; Montana Nurses' Association; Healthy Mothers, Healthy Babies, The Montana Coalition; Northern Cheyenne Tribe; Fort Belknap Community Council; The Progressive Labor Caucus; The Montana Association of Churches; Caring for Creation Network; Montana Wildlife Federation; Montana Audubon; National Wildlife Federation; Montana Public Interest Research Group; Montana Chapter of the Sierra Club; Community Awareness Network; William and Margaret Eggers, Crow Agency; Greg Lind, M.D., Missoula; Colette Kirchhoff, M.D., Bozeman; Lori Byron, M.D., Hardin; Robert Byron, M.D., Hardin; and Cheryl Reichert, M.D., Ph.D., Great Falls, filed with the Board a petition to amend ARM 17.8.740 and to adopt New Rule I pertaining to control of mercury emissions from facilities that combust coal to generate electricity for sale.

Background: Under the Montana Administrative Procedure Act, § 2-4-315, MCA, an interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Upon receipt of the petition, the agency has 60 days to either deny the petition in writing or initiate rulemaking. If the agency denies the petition, its decision must be in writing and state the reasons for denying the petition based upon "record evidence." According to the statute, "record evidence" consists of any evidence submitted by the petitioners and other interested persons or agencies in response to the petition. The agency acting on the petition (in this case the Board) may conduct a hearing to assist in the development of a record and allow the petitioners and other interested persons to present their views.

Summary of Rules Requested by Petitioners: The petitioners are requesting the Board to initiate rulemaking to control mercury emissions from electric utility steam generating units (EGUs), which are facilities that combust coal to generate electricity for sale. The proposed rules would amend ARM 17.8.740 by adding definitions for the following terms: "alternative mercury emission limit," "commercial operation has begun," "mercury," and "mercury-emitting generating unit." The proposed new rule would require power plants to reduce mercury emissions by at least 90 percent, or to achieve a mercury emission rate not to exceed 1.5 pounds per trillion Btu. To accomplish these reductions, the plant owner or operator could install new technology, replace coal with another fuel or coal product or clean the coal. Proposed new plants would have to show they meet the emission reductions as a condition of their permit. Existing plants would have until July 2010 to install mercury control technology and until July 2011 to meet the mercury emission standards. If, following proper installation and operation of mercury control technology, a plant fails to meet the mercury emission standards, that facility could apply to the Department for an alternative mercury emission limit. The proposed new rules also contain compliance, monitoring and record-keeping requirements.

Affected Parties Summary: The proposed new rule and rule amendments would affect operators of

electric utility steam generating units (EGUs), which are often referred to as coal-fired power plants.

Board Options: The Board may:

1. Grant the Petition based on record evidence and initiate rulemaking.
2. Deny the Petition in writing based on record evidence.
3. Schedule and take action at a special meeting before the statutory deadline.
4. Request the petitioners to waive the statutory deadline for an amount of time sufficient to allow Board action at the next regularly scheduled meeting.

DEQ Recommendation: The Department has no recommendation, but Department personnel will be available to answer Board questions.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment and Adoption
2. Petition